

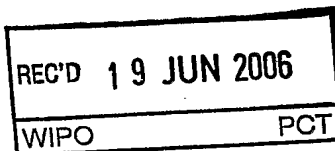
PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)



Applicant's or agent's file reference PCTP174033A	FOR FURTHER ACTION		See Form PCT/PEA/416
International application No. PCT/NL2005/000137	International filing date (<i>day/month/year</i>) 25.02.2005	Priority date (<i>day/month/year</i>) 27.02.2004	
International Patent Classification (IPC) or national classification and IPC INV. A61L9/12 F24F3/16			
Applicant SARA LEE / DE N.V. et al.			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 12 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p style="margin-left: 20px;">a. <input checked="" type="checkbox"/> <i>sent to the applicant and to the International Bureau</i> a total of 7 sheets, as follows:</p> <p style="margin-left: 40px;"><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p style="margin-left: 40px;"><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p style="margin-left: 20px;">b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the report</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input checked="" type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input checked="" type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application</p>			
Date of submission of the demand 25.11.2005		Date of completion of this report 16.06.2006	
Name and mailing address of the international preliminary examining authority: European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized officer Eijkenboom, A Telephone No. +49 89 2399-8616	



**INTERNATIONAL PRELIMINARY REPORT
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Box No. I Basis of the report

1. With regard to the **language**, this report is based on
- ☒ the international application in the language in which it was filed
 - ☐ a translation of the international application into , which is the language of a translation furnished for the purposes of:
 - ☐ international search (under Rules 12.3(a) and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4(a))
 - ☐ international preliminary examination (under Rules 55.2(a) and/or 55.3(a))
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):*

Description, Pages

1-19 as originally filed

Claims, Numbers

43-52, 58, 59 as originally filed

1-7, 10, 11, 14-42, 53-57 received on 06.01.2006 with letter of 05.01.2006

Drawings, Sheets

1/13-13/13 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☒ The amendments have resulted in the cancellation of:
- ☐ the description, pages
 - ☒ the claims, Nos. 8,9,12,13
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing *(specify):*
 - ☐ any table(s) related to sequence listing *(specify):*
4. ☒ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
 - ☒ the claims, Nos. 1
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing *(specify):*
 - ☐ any table(s) related to sequence listing *(specify):*

* If item 4 applies, some or all of these sheets may be marked "superseded."

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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos. 52,58,59, 43-51

because:

☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed (*specify*).

☒ no international search report has been established for the said claims Nos. 52,58,59, 43-51

☐ a meaningful opinion could not be formed without the sequence listing; the applicant did not, within the prescribed time limit:

☐ furnish a sequence listing on paper complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Preliminary Examining Authority in a form and manner acceptable to it.

☐ furnish a sequence listing in electronic form complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Preliminary Examining Authority in a form and manner acceptable to it.

☐ pay the required late furnishing fee for the furnishing of a sequence listing in response to an invitation under Rules 13*ter*.1(a) or (b) and 13*ter*.2.

☐ a meaningful opinion could not be formed without the tables related to the sequence listings; the applicant did not, within the prescribed time limit, furnish such tables in electronic form complying with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions, and such tables were not available to the International Preliminary Examining Authority in a form and manner acceptable to it.

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in electronic form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.

☐ See separate sheet for further details

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Box No. IV Lack of unity of invention

1. ☒ In response to the invitation to restrict or pay additional fees, the applicant has, within the applicable time limit:
- ☐ restricted the claims.
 - ☒ paid additional fees.
 - ☐ paid additional fees under protest and, where applicable, the protest fee.
 - ☐ paid additional fees under protest but the applicable protest fee was not paid.
 - ☐ neither restricted the claims nor paid additional fees.
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is:
- ☐ complied with.
 - ☒ not complied with for the following reasons:
see separate sheet
4. Consequently, this report has been established in respect of the following parts of the international application:
- ☐ all parts.
 - ☒ the parts relating to claims Nos. 1-7,10,11,14-42,53-57 .

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	22-27,36
	No: Claims	1-7,10,11,14-21,28-35,37-42,53-57
Inventive step (IS)	Yes: Claims	22-27,36
	No: Claims	1-7,10,11,14-21,28-35,37-42,53-57
Industrial applicability (IA)	Yes: Claims	1-7,10,11,14-42,53-57
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

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Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

Ad Section I:

1. This report has been established as if some of the amendments to claim 1 had not been made, since they have been considered to go beyond the application as filed (Rule 70.2(c) PCT).

In claim 1, it concerns the features relating to

- a) the first holder *being provided with apertures for passage of said active gaseous substance*;
- b) and, *wherein the first wall is made of hard material retaining its shape*.

Regarding a) it is noted that dependent claim 14 as filed states that *the second wall is provided with apertures for passage of said active gaseous substance*. Hence, no support is found in the original application for the more general wording in amended claim 1.

Regarding b) it is noted that no basis could be found in the application as filed that *the first wall is made of hard material retaining its shape*. It is furthermore noted that this wording is objectionable for lacking clarity (Art.6 PCT) in that "hard" is a mere relative term without technical character and that it is unclear to which distinction the wording "retaining shape" serves.

Ad Section III:

1. Claim 52 has no technical features. Claims 58 and 59 refer to the description and drawings without further specification of relevant technical features. Hence, for these claims a meaningful search nor examination is possible.

Ad Section IV:

1. The separate subjects are:
(1) Claims 1-7,10,11,14-42, 53-57:

Assembly of a body including an agent discharging an active gaseous substance, and a first holder having an accommodation space for the body and having a first wall being at least partially made of transparent or translucent material and a second wall of a different material and provided with means for connection with each other; and a holder for such an agent comprising a front wall and rear wall, whereby the front wall is at least partially made of transparent and translucent material.

(2) Claims 43-50:

Assembly of a body including an agent discharging an active gaseous substance, and a first holder having an accommodation space for the body, the body formed by a second holder having walls wherein at least one wall is made of a material moistenable by the liquid agent, whereby the wall prior to use is closed off by a covering layer provided with stripping means extending beyond the first holder.

(3) Claim 51:

Assembly of a body including an agent discharging an active gaseous substance, and a first holder having an accommodation space for the body, the body formed by a second holder having walls wherein at least one wall is made of a material moistenable by the liquid agent, wherein the second holder has a lip and the first holder has a passage allowing the second holder to be passed through.

These subjects are not so linked as to form a single general inventive concept. The application thus lacks unity of invention as required by Rule 13.1 PCT for the following reasons:

The common technical concept between independent claims 1, 31, 43, 51 and 53 relates to an assembly of a first holder having an accommodation space for a second holder for an agent discharging an active gaseous substance. This common technical concept, however, lacks novelty over the prior art, such as for example is disclosed in WO-A-97.42983 (claims; figures) and US-A-5.875.968 (claims, figures). Since the common technical concept is not novel, it cannot be the single general inventive

concept which is required by Rule 13.1 PCT.

2. Moreover, a technical relationship involving one or more of the same or corresponding special technical features as required by Rule 13.2 PCT cannot be established between (1) an assembly comprising a first holder comprising two walls made of different material and a second holder wherein each holder comprises a wall being at least partially made of transparent or translucent material, (2) an assembly comprising a first holder and a second holder comprising a wall made of a moistenable material and covered by a removable covering layer with stripping means extending beyond the first holder, and (3) an assembly comprising a first holder and a second holder comprising a wall made of a moistenable material, wherein the second holder is provided with a lip and the first holder comprises a passage allowing the second holder to pass through.

The special technical feature identified in subject (1) is that a wall of both holders in the assembly is made of a transparent or translucent material so the user is able to establish the state of the contained agent.

The special technical feature identified in subject (2) is that a wall of the second holder is covered by a removable covering in order to seal the moistenable membrane prior to use.

The special technical feature identified in subject (3) is that the first holder comprises a passage allowing the second holder to pass through in order to be able to suitably exchange the second holder.

It is thus concluded that no technical relationship exists between the three subjects since the contribution of each of the special technical features to the assembly lack a corresponding technical effect.

Hence, the groups of claims are not linked by common or corresponding special technical features and define different subjects not linked by a single general inventive concept.

The application thus does not meet the requirements of unity of invention as defined in Rules 13.1 & 13.2 PCT.

Since the applicant only paid one additional search fee, the International Search Report was established for the first and fourth subject only. As the International Preliminary Examination can only be based on searched subject-matter, this International Preliminary Report on Patentability is exclusively based on claims 1-7, 10, 11, 14-42, 53-57.

Ad Section V:

1.1 WO-A-97.42983 (D1) discloses (see the references in the International Search Report) an air freshener dispenser device comprising a holder with see-through apertures holding an element comprising freshener medium between two semi-permeable and transparent walls covered with peelable protecting layers.

US-A-5.875.968 (D2) discloses (see the references in the International Search Report) an air freshener dispenser comprising nested holder and reservoir container both being of transparent material.

US-A-4.387.849 (D3) discloses (see the references in the International Search Report) a volatile substance emitting device comprising a holder with transparent wall and a transparent replaceable body with active substance, plural bodies with active substance can be connected with breakable connections for individual use. It is clear from the embodiments shown in figures 5, 7, 8 and accompanying description (column 12, line 58-column 13, line 46) that the holder may comprise first and second walls (12, 15, 101, 102) of different material and cooperating and connecting to each other.

US-A-3.807.082 (D4) discloses (see the references in the International Search Report) an apparatus for killing insects by emitting a volatile insecticidal agent comprising a holder with transparent wall and a transparent replaceable body with active substance, plural bodies with active substance can be connected with breakable connections for individual use.

US-A-3.951.622 (D5) discloses (see the references in the International Search Report) a volatile substance emitting device comprising glass bottle holder (1) with transparent wall with plastic lid (5) screwed on top of the bottle holder (1) having semi-permeable membrane (7) and a removable cap (19) fitted by snapping or thread over the lid. The glass bottle holder (1) can accommodate the package (13) with the volatile liquid (15).

GB-A-2.236.677 (D6) discloses (see the references in the International Search Report) a holder (7) for accommodating a device (1) comprising volatile liquids, the holder (7) comprising two parts for refill purposes. D6 does not mention that the two parts can be made of different materials.

- 1.2 As can be seen from the above, D3 discloses in combination all the features defined in independent claim 1. Hence the subject-matter of this claim is not new (Article 33(2) PCT).

Regarding the disclosure in either one of D1 to D4, the same applies to the subject-matter of independent claim 31.

- 1.3 The features of independent claim 37 are known from either one of D3 and D4. Thus, the subject-matter of this claim is also not novel (Article 33(2) PCT).
- 1.4 It is also concluded that D5 discloses an assembly of a holder accommodating for a body including a volatile liquid, the holder comprising two parts of different material (glass bottle (1) and plastic lid (5) and/or cap (19)).

Hence the subject-matter of independent claim 53 is not new (Article 33(2) PCT).

- 1.5 Dependent claims 2-7, 10, 11, 14-21, 28-30, 32-35, 38-42, 54-57 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step (Article 33(2) and (3) PCT).
- 1.6 The combination of the features of dependent claims 22-27, 36 are neither known

from, nor rendered obvious by, the available prior art.

Ad Section VIII:

1. The subject-matter of the claims obfuscated (Art.6 PCT) by the use of undefined general terms, like assembly, body, holder, accommodation space, portion, wall and the like, for defining the same or different features.

Moreover, it is due to the omission of reference signs placed in parentheses (Rule 6.2(b) PCT) to the features of the claims that the understanding of the alleged invention is severely hampered.

For example, claim 1 is directed to an "assembly of a body" although mere features of a holder are mentioned in the claim. The skilled person is at loss what constitutes the assembly and the body and why the holder is named to be the "first" since a reference to a "second" holder is missing in the claim.

Moreover, there appears to be a conflict between the "assembly of a body" according to claim 1 and the "assembly" according to claim 37. Presumably, claim 37 was meant to be directed to comprise the embodiment as represented in figure 12A. However, the wording of the claim is quite inadequate (Art.6 PCT).

The terminology of the claims should be consistent with the description and corresponding features should be identified by the same terms and same reference signs.

2. Apparatus claims 1 and 53 have been drafted as separate independent claims.

The various definitions of the method and apparatus given the independent claims make it uncertain as to what aspects constitute essential features. The subject-matter for which protection is sought in the independent claims is such that the claims as a whole are not clear and concise. Independent claims of the same category with different combinations of features render each other unclear, with the result that the

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requirements of Article 6 PCT are not met.

The claims should have been drafted including only the minimum necessary number of independent claims in any one category with dependent claims as appropriate.